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EXAMINER

ROSSI, JESSICA

ART UNIT PAPER NUMBER

1733

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/555,548

Applicant(s)

SMITS, ANTONIUS ADRIANUS
ARNOLDUS

Examiner

Jessica L. Rossi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/28/03, Amendment.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-21,23-29,31-33 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-21,23-29,31-33 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment dated 11/28/03. Claims 19-21, 23-29, 31-33, and 37 are pending.
2. The rejection of claims 19, 21, 23-25, and 37 under 35 U.S.C. 103(a) as being unpatentable over Geyser et al. (US 4293365; of record) in view of Shimizu et al. (US 5489360; of record), or alternatively, Shimizu in view of Geyser, as set forth in paragraph 9 of the previous office action, has been withdrawn in light of Applicants arguments dated 11/28/03.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 19-21, 23-29, 31-33, and 37 **stand** rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement (see paragraph 7 of previous office action). The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to claim 19, the present specification does not have support for “a holder for holding a stock of objects, **wherein each object may have a different thickness.**” According to the specification, the apparatus is capable of affixing “different kinds of objects” to moving products (p. 2, lines 1-5). However, the present specification fails to teach the “different kinds of objects” having different thicknesses. Furthermore, even if the present specification did teach

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the "different kinds of objects" having different thicknesses, it still fails to teach placing the "different kind of objects" in the holder at the same time and affixing them to products during operation of the affixing means.

The reference only provides one example of an object. The example teaches a stock of shampoo bags 6 being placed in the holder and then being attached to moving products using the affixing means (lines 17-20), wherein the skilled artisan would have appreciated that objects 6 are of the **same** kind. Therefore, the skilled artisan would only expect objects 6 to have the same thickness, since the present specification does not teach or suggest anything to the contrary.

It is noted Applicants are relying on Figure 1 to show that objects 6 have different thicknesses. However, one skilled in the art looking at Figure 1 clearly would not be able to determine if objects 6 have different thicknesses. Furthermore, the Figures in an application are only working drawings which are not required to be drawn to specification and therefore cannot be relied upon to accurately and precisely depict every aspect of the claimed invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Lubersky et al. (US 2887022).

With respect to claim 19, Lubersky teaches a device comprising an affixing means 11 and a stationary holder 15 (Figure 1; column 2, lines 38 and 45). The reference teaches the affixing

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means 11 comprising at least one suction nozzle 12 on a carrier 14, wherein during standstill of the affixing means the carrier is moveable in a radial direction with respect to an axis of rotation (Figures 4-8; column 2, line 68 – column 3, line 5).

As for the remaining claimed limitations, please note that 1) the device need only be capable of performing the function and/or 2) the material worked upon and the manner in which the device cooperates with the material worked upon gets no weight in an apparatus claim (see MPEP § 2115).

Lubersky teaches the holder being for a stock of objects 16, the at least one nozzle removing an object from the holder and moving the object, the affixing means being capable of rotary movement about an axis of rotation and being driven intermittently between rotation and standstill, wherein during standstill the carrier is positioned in alignment with an object in the holder and is moveable in the radial direction for attaching the at least one suction nozzle to the object for removing the object from the holder, and wherein the at least one suction nozzle directly faces the object within the holder (Figures 4-8; column 2, line 68 - column 3, lines 13).

Since the device of Lubersky has the same structure (i.e. suction nozzles which remove object from holder and deposit the object on a moving conveyor; see Figure 1 and column 2, lines 59-60 of Lubersky) as that of the present invention while operating in the same manner (affixing means driven intermittently between rotation and standstill), the skilled artisan would have appreciated that the device of Lubersky would be capable of affixing objects to products moving in a row, wherein each object may have different thicknesses (note 112 1st paragraph rejection set forth above).

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7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 19-20 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon et al. (US 5256365).

With respect to claim 19, Gordon teaches a device comprising affixing means 22/24 and a stationary holder 40/46 (Figure 3; column 2, lines 34-36; column 4, lines 14-15). The reference teaches the affixing means comprising at least one suction nozzle 66 on a carrier 30/32 (Figure 3; column 5, lines 21-22; column 4, lines 22-24 and 30-31), wherein during standstill of the affixing means (reference refers to affixing means being “dwelled”) the carrier is moveable in a radial direction with respect to an axis of rotation (Figure 10; column 2, lines 34-40; column 2, line 66 – column 3, line 2; column 4, lines 22-36).

As for the remaining claimed limitations, please note that 1) the device need only be capable of performing the function and/or 2) the material worked upon and the manner in which the device cooperates with the material worked upon gets no weight in an apparatus claim (see MPEP § 2115).

Gordon teaches the holder being for a stock of labels, the at least one nozzle removing a label from the holder and moving the label, the affixing means being capable of rotary movement about an axis of rotation and being driven intermittently between rotation and standstill, wherein during standstill the carrier is positioned in alignment with a label in the holder and is moveable in the radial direction for attaching the at least one suction nozzle to the label for removing the

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label from the holder, and wherein the at least one suction nozzle directly faces the label within the holder (Figures 3 and 10; column 6, lines 35-42).

Since the device of Gordon has the same structure (i.e. suction nozzles which remove object from holder and deposit the object onto something else – see Figure 7 and column 5, lines 44-56 of Gordon) as that of the present invention while operating in the same manner (affixing means driven intermittently between rotation and standstill), the skilled artisan would have appreciated that the device of Gordon would be capable of affixing objects to products moving in a row, wherein each object may have different thicknesses (note 112 1st paragraph rejection set forth above).

Regarding claims 20 and 23, Gordon teaches the affixing means 22/24 including more than one carrier 30/32, wherein the carriers are positioned a substantially uniform distance apart in a circle around the axis of rotation such that one of the carriers is positioned near the holder 40/46 during standstill of the affixing means (Figures 3 and 10; column 4, lines 14-35). As for the limitations regarding the position of the carriers with respect to the a location where affixing of the object to a product takes place, note that the material worked upon (object, product) and the manner by which the apparatus cooperates therewith gets no weight in an apparatus claim (MPEP § 2115).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 21, 28-29, and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lubersky et al.

Regarding claim 21, Applicant is directed to paragraph 6 above for a complete discussion of Lubersky. Lubersky teaches the carrier 14 being provided with at least one suction nozzle 12 (Figure 1; column 2, lines 35-45). Selection of a particular diameter for the nozzle would have been within purview of the skilled artisan at the time of the invention depending on the dimensions of the objects being handled.

Regarding claims 28-29 and 31-33, Applicant is directed to paragraph 6 above for a complete discussion of Lubersky. The reference teaches the affixing means being driven via an index mechanism (column 3, lines 29-31) comprising a combination of parts substantially the same as those being claimed by the present invention; ingoing and outgoing shafts that allow for the intermittent movement of the affixing means and radial movement of the carrier, driving mechanisms, a cam disc and corresponding cam associated with a driving mechanism, a lever rotatable about a shaft and provided with a lever cam, etc. (Figures 2-3; column 3, lines 14-75). However, a particular arrangement for these parts and their cooperation with each other would have been within purview of the skilled artisan at the time of the invention.

11. Claims 24 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lubersky et al. and further in view of Calvert (US 5104369) and Ilseman (US 4302277).

Regarding claim 24, Applicant is directed to paragraph 6 above for a complete discussion of Lubersky. Lubersky is silent as to a glue dispenser. Lubersky teaches the objects being cartons (column 1, lines 15-16), wherein the skilled artisan would have appreciated it being known in the art to apply glue to cartons prior to their assembly, as taught by Calvert (column 4,

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lines 35-40). Therefore, it would have been obvious to the skilled artisan to include a glue dispenser in the device of Lubersky because it is known to incorporate such a dispenser in a device comprising a rotary affixing means that uses suction means 36 located around the periphery of the affixing means to remove objects 22 from a stationary holder 40, transport them past a glue dispenser 42, and deposit them on a moving conveyor 14, as taught by Ilseman (Figure 1; column 5, lines 65-68; column 6, lines 62-64), wherein this allows for adhesive-free objects to be stored in the holder thereby preventing sticking of the objects to each other. However, note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

Regarding claim 37, Ilseman teaches applying glue to the object engaged by the carrier during standstill of the affixing means (column 6, lines 62-64). Therefore, since Lubersky teaches stopping movement of the rotary affixing means at each workstation, it would have been obvious to stop movement at a glue dispensing station to ensure proper application of the glue. However, note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

12. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lubersky et al. and further in view of Schaupp (US 5431274).

Regarding claim 25, Applicant is directed to paragraph 6 above for a complete discussion of Lubersky. Lubersky teaches a motor for driving the parts of the affixing means (column 3, lines 14-15) but is silent as to the rest of the limitations. It is known in the art to control the rotational speed of an electric motor on a basis of signals from a pulse generator wherein the

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signals are a measure of speed of movement of the products, as taught by Schaupp (column 10, lines 28-56).

It would have been obvious to the skilled artisan at the time of the invention to use an electric motor for that of Lubersky and control its speed on a basis of signals from a pulse generator, wherein the signals are a measure of product speed because such is known in the art, as taught by Schaupp, and this allows for properly aligning the object held by the nozzle with the moving product. However, note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lubersky et al. and further in view of Keeler et al. (US 5102485; of record).

Regarding claim 26, Applicant is directed to paragraph 6 above for a complete discussion of Lubersky. Lubersky is silent as to this limitation. It is known in the art to use control means for starting and stopping movement of a rotary affixing means, as taught by Keeler (column 4, lines 51-60). Therefore, it would have been obvious to include control means capable of putting the carrier of Lubersky temporarily out of action because such control means are known in the art, as taught by Keeler, wherein this prevents the carrier from removing an object from the holder when no product is present on the conveyor.

14. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lubersky et al. and further in view of Wood (US 4025385).

Regarding claim 27, Applicant is directed to paragraph 6 above for a complete discussion of Lubersky. The reference is silent as to this limitation. It would have been obvious to the skilled artisan at the time the invention was made to include control means provided with

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detection means for detecting that a moving product is approaching the affixing means because such is known in the art, as taught by Wood (column 5, lines 60-63), wherein this allows for rotation of the affixing means to be initiated so that a carrier is properly aligned with the product. However, note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

15. Claims 24 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. and further in view of Ilseman.

Regarding claim 24, Applicant is directed to paragraph 8 above for a complete discussion of Gordon. The reference is silent as to a glue dispenser. It would have been obvious to the skilled artisan to include a glue dispenser in the device of Gordon because it is known to incorporate such a dispenser in a device comprising a rotary affixing means that uses suction means 36 located around the periphery of the affixing means to remove labels 22 from a stationary holder 40, transport them past a glue dispenser 42, and affix them to a product 12 moving on a conveyor 14, as taught by Ilseman (Figure 1; column 5, lines 65-68; column 6, lines 62-64), wherein this allows for adhesive-free labels to be stored in the holder thereby preventing sticking of the labels to each other. However, note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

Regarding claim 37, Ilseman teaches applying glue to the label engaged by the carrier during standstill of the affixing means (column 6, lines 62-64). Therefore, since Gordon teaches stopping movement of the rotary affixing means at each workstation, it would have been obvious to stop movement at a glue dispensing station to ensure proper application of the glue. However,

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note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

16. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. and further in view of Schaupp.

Regarding claim 25, Applicant is directed to paragraph 8 above for a complete discussion of Gordon. The reference is silent as to these limitations. It is known in the art to control the rotational speed of an electric motor on a basis of signals from a pulse generator wherein the signals are a measure of speed of movement of the products, as taught by Schaupp (column 10, lines 28-56).

It would have been obvious to the skilled artisan at the time of the invention to use an electric motor for driving the shafts of Gordon and to control the speed of the motor on a basis of signals from a pulse generator, wherein the signals are a measure of product speed because such is known in the art, as taught by Schaupp, and this allows for properly aligning the object held by the nozzle with the moving product. However, note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

17. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. and further in view of Keeler et al.

Regarding claim 26, Applicant is directed to paragraph 8 above for a complete discussion of Gordon. The reference is silent as to this limitation. It is known in the art to use control means for starting and stopping movement of a rotary affixing means, as taught by Keeler (column 4, lines 51-60). Therefore, it would have been obvious to include control means capable of putting the carrier of Gordon temporarily out of action because such control means are known

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in the art, as taught by Keeler, wherein this prevents the carrier from removing an object from the holder when no product is present.

18. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. and further in view of Wood.

Regarding claim 27, Applicant is directed to paragraph 8 above for a complete discussion of Gordon. The reference is silent as to this limitation. It would have been obvious to the skilled artisan at the time the invention was made to include control means provided with detection means for detecting that a moving product is approaching the affixing means because such is known in the art, as taught by Wood (column 5, lines 60-63), wherein this allows for rotation of the affixing means to be initiated so that a carrier is properly aligned with the product. However, note the material worked upon and the manner by which the apparatus cooperates with the material worked upon gets no weight.

Response to Arguments

19. Applicant's arguments filed 11/28/03 have been fully considered but they are not persuasive.

20. On page 2-8 of arguments, Applicants argue that the 112 1st paragraph rejection set forth in the previous office action is improper because Figure 1 does show a plurality of objects 6 having different thicknesses.

Once again, the examiner would like to point out that Figures in an application are only working drawings which are not required to be drawn to specification and therefore cannot be relied upon to accurately and precisely depict every aspect of the claimed invention.

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21. On page 2 of the arguments, Applicants argue that the specification teaches the objects in the holder being bags of shampoo where it would be apparent that these bags would have different thicknesses depending on the manner in which the shampoo is distributed in the bag.

The examiner respectfully points out that the specification teaches and/or suggests **absolutely nothing** regarding the thickness of the shampoo bags **nor does it** teach and/or suggest anything regarding distribution of shampoo in the bag. Therefore, it is not possible for the skilled artisan to appreciate that the bags would have different thicknesses due to shampoo distribution within, since distribution would depend on a variety of factors including the amount of shampoo within each bag, the material of the bags (i.e. degree of flexibility, conformability), etc. – **factors never addressed by the present specification.**

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jessica L. Rossi** whose telephone number is **571-272-1223**. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jessica L. Rossi
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Art Unit 1733